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Supreme Court, U.S.
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No. 04-1314

In The

Supreme Court of the United States

RANDOLPH A. OLSON,

Petitioner,

v.

TEAMSTERS LOCAL NO. 70,
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA; AND UNITED PARCEL SERVICE,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF RESPONDENT TEAMSTERS LOCAL 70 IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals erred in determining that the Federal District Court did not abuse its discretion in denying Petitioner's Rule 60(b) motion based on newly discovered evidence.[1]

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[1] This Opposition brief addresses only Petitioner's claim against Respondent Teamsters Local 70. That claim is separate from Petitioner's claim against Respondent United Parcel Service.

* * *

Local 70's Statement of the Question Presented is quite different than Petitioner's. As we show *infra*, p. 3, the relevant rulings of the Court of Appeals and the District Court do not raise the question stated by Petitioner at this level of the proceeding.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION AS IT RELATES TO TEAMSTERS LOCAL 70	3
CONCLUSION	6

TABLE OF AUTHORITIES

Page

FEDERAL RULES

Fed. R. Civ. P. 60(b) ..... *passim*

MISCELLANEOUS

Wright, Miller & Kane, *Federal Practice and Procedure*, Civ. 2d Section 2857 5

STATEMENT OF THE CASE

Teamsters Local 70 accepts Petitioner's factual recitation of the events in this case (Pet. 3-7) to the extent not inconsistent with the facts stated below that supplement those included in the Petition.

The allegation against Teamsters Local 70 contained in the Complaint is that it violated its duty of fair representation in handling Petitioner's protest to his termination for overstaying a leave of absence. The relevant contract provision restricts leaves to "two (2) years unless extended by written consent of the Union and the Employer." (Pet. 6a.) Petitioner's leave was occasioned by a non-industrial injury, from which he was medically released to return to work shortly before expiration of the third year of his absence. He did not obtain the written consent referred to in the contract provision. Petitioner's protest was based in part on his assertion that he had been discriminated against by his employer in that other employees who exceeded the contractual leave period had been returned to work without a problem. The Union's business agent, Marty Frates, and Petitioner attempted to uncover examples of disparate treatment in this respect. In this process, Frates told Petitioner that the Union made a distinction in the enforcement of this contract provision between leaves of absence occasioned by industrial injuries and leaves that were unrelated to industrial injuries or sickness. (Pet. App. 7a.) Specifically, the Union's position was that absences for work-related reasons were not subject to the contractual restriction, and indeed, the Employer had not in the past terminated those employees whose absences had exceeded the contractual time restriction. (*Id.*, p. 14a.) During the investigation period, Petitioner identified to Frates two cases in which employees

had been returned to work after leaves of absence that were prolonged beyond the contractual limitation. One involved an industrial injury, and the business agent informed Petitioner that it would not support Petitioner's discrimination grievance in view of the Union's position. (*Id.*, p. 7a.) The other absence was not work-related and the business agent presented it to the grievance panel that ultimately sustained Petitioner's termination. (*Id.*)

Petitioner asserts before this Court that Frates concealed from him, and the grievance panel, examples of other cases of which he was aware in which the Employer had not enforced the time restrictions for leaves of absence, and thereby undermined Petitioner's grievance. The assertion is based on an argument made by Frates in an altogether different and more recent grievance case that he knew about several instances in which the Employer had not enforced the provision limiting leaves of absences. (Pet. App. 7a.) Those cases, however, involved work-related absences, and for that reason, Frates explained that they were not the same as Petitioner's situation and would not support the latter's claim of discrimination. (*Id.*, p. 13a.)

The District Court denied Petitioner's Rule 60(b) motion on two grounds. First, the Court found that "had the previous [non work-related] cases and Frates' knowledge of them been presented during summary judgment, the disposition of the case would not have been different." (Pet. App., 14a.) Second, in response to the Petitioner's argument that Frates had intentionally misrepresented that he was unaware of cases that would prove Petitioner was the victim of discrimination, the Court found that there had been no inconsistency in Frates' testimony and position either before or after summary judgment had

been entered against Petitioner. (Pet. App. 17a-19a.) In short, there had been no misrepresentation.

The Court of Appeals disposed of Petitioner's argument concerning Frates' credibility in this respect in the following language (Pet. App. 3a):

> The record supports the district court's denial of the Rule 60(b) motion on the ground that the alleged new statements were consistent with and cumulative of prior evidence presented. The district court properly found that the evidence would not have changed the jury verdict and did not support a finding of misrepresentation.

REASONS FOR DENYING THE PETITION AS IT RELATES TO TEAMSTERS LOCAL 70

1. At the outset, it does not appear that the question Petitioner wishes to raise with respect to Teamsters Local 70 is, in fact, before the Court. Petitioner seeks to have the Court reaffirm the proposition that a jury, and not the District Court in motion practice, should have been allowed "to assess the credibility of the Union's explanation for its inconsistent statement as to whether or not [the Union] knew of prior leave of absence cases where the employee was not discharged." (Pet. i.) However, the District Court found on the basis of unchallenged evidence, and the Court of Appeals confirmed, that there was no inconsistency or misrepresentation in the statements and explanations Frates gave with respect to the Union's position on the leave of absence provision in the collective bargaining agreement. Without inconsistency or misrepresentation, there is no credibility issue to be resolved. The only question involving Local 70 presented by the record is

whether the Court of Appeals erred in ruling that the District Court's denial of the Rule 60(b) motion was within the District Court's discretion.[2]

2. Irrespective of the scope of the issues question that this Court might address on the record in this proceeding, there is no compelling reason for the Court to accept review of the correctness of the ruling made on the Rule 60(b) motion. None of the considerations for granting the Petition as noted in Rule 10 of this Court is present. The Petition does not and could not suggest the existence of a conflict in court decisions or an important federal question, or that there is justification for invoking this Court's supervisory power. The litigation before the Court is of no significance to anyone other than the parties, presents no novel issues, and involves no more than factual conclusions of the trial court based on essentially uncontested evidence. The challenged rulings reflect

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[2] Rule 60(b) of the Federal Rules of Civil Procedure, in relevant part, provides:

> **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

discretionary judgment, not issues of law. There is no discernable reason for this Court to extend its certiorari jurisdiction to review an asserted error in the exercise of a lower court's discretionary judgment that has been upheld on appeal.

3. The refusal of the Court of Appeals to reverse the District Court's denial of the Rule 60(b) motion is, in any event, clearly correct. The District Court's ruling is based on a detailed analysis of the relevant and uncontested evidence, and a full and rational explanation of the Court's conclusions. (Pet. App. 3a-19a.) Petitioner does not and could not reasonably contend that the District Court's conclusions are arbitrary or unprincipled.[3] Rule 60(b) is addressed to the discretion of the trial court, and the standard of review for the exercise of that discretion is highly deferential. Wright, Miller & Kane, *Federal Practice and Procedure*, Civ. 2d Section 2857.

In addition, as noted by the Court of Appeals (Pet. App. 3a), the District Court found that there would have been no difference in the grievance panel's decision had Frates informed Petitioner before the hearing, or the grievance panel at the hearing, that there were several cases with which Frates was familiar in which employees with work-related absences had returned to work long after the contractual period had elapsed. This finding is clearly correct. The Union had long insisted that the contractual limitation did not apply to work-related

[3] Petitioner's only argument, as we understand it, is that the question of whether Frates intentionally misrepresented his familiarity with situations where employees were permitted to return to work after overstaying leaves of absence should have been permitted to be decided by a jury. We have responded to this position, *supra*, p. 3.

injuries, and to protect the Union's position in that respect, Frates would not have relied on cases involving work-related injuries. They probably would not have been presented to the panel because they would not have established discrimination. If presented, Frates would have been required to distinguish them from this case, again in order to protect the Union's position. Rule 60(b) does not serve as a basis for setting aside a final judgment that would have, in any event, been entered had the newly discovered evidence been timely adduced prior to judgment.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Petition be denied as to Respondent Teamsters Local 70.

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